(59)

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 10 of 2007

APPELLANT PLAINTIFF	:	Union of India, Though: Divisional Railway Manager, P.K. Samant Rai, South Eastern Central Railway, Raipur Division, Raipur (CG)
		Versus
RESPONDENTS DEFENDANTS	: 1.	Kuber Rathi, Gudiyari Road, Near Railway Station, Raipur, District Raipur, Chhattisgarh.
	: 2.	Gyan Prakash Sahu, President, Licensed, Kuli Sangh, Railway Station, Raipur, District Raipur (CG)
	: 3.	Sitaram Baba (Temple Pujari), Hanuman Mandir, Railway Station Premises, Raipur, District Raipur (CG)

Shri Abhishek Sinha, Counsel for the appellant/plaintiff

ORAL ORDER
(Passed on 19.3.2007)

The following oral order of the Court was passed by **Dilip Raosaheb Deshmukh,J.**

Heard on admission.

2. The appellant is aggrieved by an order dated 15.11.2006 passed by 14th Additional District Judge, Raipur, District Raipur in Civil Suit No. 19-A of 2006 whereby the application under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. for grant of temporary injunction from restraining the defendants/respondents herein for continuing with the construction of Hanuman temple, has been rejected.

3. Shri Abhishek Sinha, learned counsel for the appellant, did not dispute the fact that the photographs at page 35 show the stage of construction of the temple on the date on which an earlier application for grant of temporary injunction was dismissed by the same Court on 19.04.2006. It was also not disputed that no appeal was preferred against that order. It is also not in dispute that the appellant herein did not pray for restraining the defendants/respondents from construction of boundary wall around the temple while filing an application under Order 39 Rule 1 & 2. Lastly, it was also not disputed that the Hanuman Temple was constructed

in the year 1970 in front of Railway Station. Learned counsel for the appellant contended that thereafter much alteration in the structure of temple has taken place.

4. By the impugned order, the learned 14th Additional District Judge, Raipur, considered the fact that the earlier application for temporary injunction was dismissed which order has attained finality. It also considered the averments in paragraph 5 of the reply by the defendants that the renovation work of the temple has already been completed. While dismissing the application under Order 39 Rule 1 & 2 read with Section 151 C.P.C. it also passed an order that the defendants shall be responsible for their act if is found that wrong declaration was made by them. On these premises, it refused grant of temporary injunction.

5. Having heard learned counsel for the appellant, I am of the considered opinion that there is no merit in this appeal. The renovation of temple having been completed or nearing completion as alleged by the appellant, and the earlier order of rejection of an application under Order 39 rule 1 and 2 C.P.C. at the stage of renovation of temple having become final, the balance of convenience lies in favour of the respondents and the rejection of the application under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. by the learned 14th Additional District Judge, Raipur is well merited and calls for no interference in this M.A. The renovation work of temple undertaken by the respondents/defendants shall be at their own risk and the respondents/defendants shall be bound by the final order, if any, passed in Civil Suit No. 19-A of 2006.

6. Misc. Appeal is dismissed at the admission stage. The learned 14th Additional District Judge, Raipur, is directed to expeditiously dispose of the Civil Suit No. 19-A of 2006 preferably within a year from today.

Certified copy as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge